

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOHN COUSER,

Petitioner,

v.

05-CV-1040

ANTHONY ZON,

Respondent.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

Petitioner John Couser commenced this action seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. The Court referred this matter to the Hon. Victor E. Bianchini, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

The Magistrate recommended that the Court deny the petition for a writ of habeas corpus. Report-Recommendation (April 23, 2008). Further, Magistrate Judge Bianchini recommended that a certificate of appealability not issue. In denying Petitioner's request, Magistrate Judge Bianchini concluded that: (1) the state court's decision did not violate any clearly-established, Supreme-Court-determined federal law; (2) petitioner is procedurally barred from alleging an erroneous jury charge and can not establish a constitutional violation with respect to this charge; (4) petitioner can not allege any error with respect to the conspiracy jury charge; (5) there was sufficient evidence to establish accomplice liability for burglary and to establish

conspiracy; (5) the trial court did not err in precluding evidence that petitioner's co-conspirators were involved in a similar home invasion one-month prior to the murder in this case; (6) the photographs and videotape of the crime scene were not so "grotesque [or] inflammatory" as to deprive Petitioner of a fair trial; (7) the District Attorney's testimony did not violate the "unsworn witness" rule; and (8) Stone v. Powell, 428 U.S. 465 (1976) precludes *de novo* review of petitioner's Fourth Amendment claim. Report-Recommendation at 10, 11, 12, 18, 19, 22, 25, 29, 31, 35.

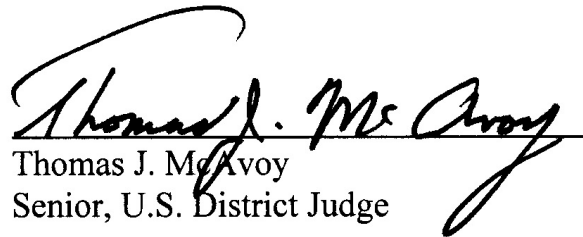
Petitioner filed objections to the Report-Recommendation. When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in Plaintiff's objections, the Court adopts the recommendation of Magistrate Judge Bianchini for the reasons stated therein.

For the foregoing reasons, Petitioner's request of a writ of habeas corpus is **DENIED**. Further, a certificate of appealability should be issued when a petitioner "make[s] a substantial showing of the denial of a federal right." Barefoot v. Estelle, 463 U.S. 880, 881-82; 28 U.S.C. § 2253(c). Having failed to show that he has been denied a federal right, any request for a Certificate of Appealability is **DENIED**.

IT IS SO ORDERED.

Dated: June 17, 2008



Thomas J. McAvoy
Senior, U.S. District Judge